

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

ROBERT A. WHITE)	
Claimant)	
VS.)	
)	
UARCO, INC.)	Docket No. 205,248
Respondent)	
AND)	
)	
CNA INSURANCE COMPANY)	
Insurance Carrier)	
AND)	
)	
KANSAS WORKERS COMPENSATION FUND)	

ORDER

Claimant, respondent, and Fund appeal from an Award rendered by Special Administrative Law Judge Cortland Q. Clotfelter on December 27, 1997. The Appeals Board heard oral argument August 5, 1998.

APPEARANCES

Matthew S. Crowley of Topeka, Kansas, appeared on behalf of claimant. Anton C. Andersen of Kansas City, Kansas, appeared on behalf of respondent and its insurance carrier. John W. Nitcher of Lawrence, Kansas, appeared on behalf of the Kansas Workers Compensation Fund.

RECORD AND STIPULATIONS

The Appeals Board has considered the record and adopted the stipulations listed in the Award.

ISSUES

1. Did claimant suffer personal injury by accident arising out of and in the course of his employment?
2. What is the nature and extent of claimant's injury and disability?
3. Is claimant entitled to future medical care and treatment at the expense of respondent and its insurance carrier?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Special Administrative Law Judge awarded claimant benefits based on a 13 percent functional impairment. The Board concludes, based on the findings of fact and conclusions of law stated below, the Award should be reversed and benefits denied.

Findings of Fact

1. Claimant began working for respondent in 1989 and, at the time of the alleged accident, he worked as a perfecting press operator. His duties included lifting 60 to 75 pounds of unwind shaft, rolling 150 to 900 pound rolls of paper, and pulling on 2000 pound mechanical inserts. He performed bending and twisting activities while setting up the press and lifting, bending, and twisting activities when stacking printed material. Claimant also operated a lawn mowing business of his own.
2. In early December 1993, claimant reported a low back injury to respondent. Claimant did so after diagnosis of a herniated disc at L5-S1 based on an MRI done at the direction of Dr. Jonson Huang. Claimant did not recall telling his employer the cause of the problem.
3. Claimant had a history of low back problems before the herniated disc was diagnosed. He testified to an approximate 15-year history of backaches which would come and go. In 1991, claimant received chiropractic treatment from Dr. Bernard D. Kunc for low back complaints at L4-5 and in the sacrum from operating a tractor/mower. Claimant saw Dr. Kunc again in 1992 for similar complaints.
4. On July 12, 1993, claimant went again to Dr. Kunc. Dr. Kunc's records indicate claimant reported that on July 8, 1993, claimant fell onto some steps at home. The records from claimant's subsequent visits with Dr. Kunc reflect complaints of numbness and pain in claimant's left leg. The records from the last visit on August 2, 1993, indicate the leg pain and numbness had improved to the point there was "almost no pain, no numbness."
5. On October 28, 1993, claimant went to his family physician, Dr. Peter A. Bock. Dr. Bock's records for the examination on that date show claimant advised he had been having back pain for three months with pain in the left leg and toes for the last six weeks.

The same record mentions claimant's lifting at work and mowing work and then states "no specific injury."

6. Claimant was next examined on November 17, 1993, by Dr. Huang, the physician who first diagnosed the herniated disc. Dr. Huang's report from that examination gives the following history:

History obtained per Mr. White of gradual onset of low back pain approximately 5 months followed 3 months ago by left leg involvement "entire left leg" although predominantly posterior, proximal-distal with associated leg numbness-tingling.

The report also states "no history of recent fall" The report also mentions claimant's work operating a press and mowing lawns but does not state a cause of the back complaints.

7. The Board finds claimant has failed to prove that the low back injury was caused or aggravated by his work for respondent. Claimant saw three physicians between July 8, 1993, when he fell onto the steps at home, and December 1993 when the herniated disc was diagnosed. In each case, the history of complaints dates back to approximately the date claimant fell onto the steps at home. In addition, none of the testifying physicians gives an opinion which would support an award. Dr. John D. Ebeling, the neurosurgeon who did the surgery on claimant's low back, refused to provide an opinion about the cause of the injury. Dr. Huang testified that the fall onto the steps was one probable cause of the herniation. He also testified that work for respondent could have aggravated the injury. He does not provide a medical opinion that the work did aggravate the injury or give an opinion about the extent of any such aggravation. Finally, Dr. Edward J. Prostic, the physician retained by claimant, testified first the work for respondent was "competent" to cause the herniation of the disc. When given further history, including the history of radiating symptoms in July 1993, Dr. Prostic testified it would be reasonable for the disc herniation to be attributed to the activities in July 1993 with the subsequent work aggravating the condition. Dr. Prostic did not give any opinion about the extent of impairment or disability which he would attribute to the aggravation from work activities. In our view, Dr. Prostic's testimony would support a conclusion that the work aggravated the injury but would not support an award because the testimony does not provide a reasonable basis for determining the extent of injury caused by work.

Conclusions of Law

1. Claimant has the burden of proving his/her right to an award of compensation and of proving the various conditions on which that right depends. K.S.A. 44-501(a).

2. K.S.A. 44-501 provides that in cases involving aggravation of preexisting impairment the disability awarded shall only be the increased disability and must be reduced by the extent of any preexisting functional impairment:

The employee shall not be entitled to recover for the aggravation of a preexisting condition, except to the extent that the work-related injury causes increased disability. Any award of compensation shall be reduced by the amount of functional impairment determined to be preexisting.

3. Claimant has not proven the extent of any injury arising out of and in the course of employment. The Board finds the evidence indicates the most probable cause of claimant's herniated disc was the fall at home. The evidence fails to establish that the work-related aggravation caused increased disability.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award rendered by Special Administrative Law Judge Cortland Q. Clotfelter on December 27, 1997, should be, and is hereby, reversed and benefits denied.

IT IS SO ORDERED.

Dated this ____ day of August 1998.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Matthew S. Crowley, Topeka, KS
Anton C. Andersen, Kansas City, KS
John W. Nitcher, Lawrence, KS
Cortland Q. Clotfelter, Special Administrative Law Judge
Philip S. Harness, Director